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75-63

April 1, 1975

(R 75-85)

The Honorable Sister Clare Dunn
House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Re: Request for formal opinion on HB 2344.

Dear Representative Dunn:

In your letter of March 3, 1975, you posed the following question:

Does HB 2344 (copy attached) contain any provisions which would violate the Arizona Constitution or Arizona statutes?

The basic objective of HB 2344 is to create a food stamp program tax account under A.R.S. § 42-1341. All monies collected under the transaction privilege tax code on sales of items purchased with federal food stamps would be deposited in this fund. The monies would be credited entirely to the Department of Economic Security to be used as follows: 20% for a "contingency fund" for the food stamp program; 30% for the "outreach program"; 50% for use in the food stamp program operating budget. The funds would also be exempt from the lapsing provisions of A.R.S. § 35-190.

It is axiomatic that the Legislature's power to tax is plenary under Article 9 of the Arizona Constitution. Luhrs v. City of Phoenix, 52 Ariz. 438, 83 P.2d 283 (1938); Ingraham v. Forman, 40 Ariz. 29, 63 P.2d 998 (1937). The proposed statute seems to fall well within the broad boundaries of taxation thus established, with one exception.

That exception relates to Article 9, Sections 3 and 9. The former provision states, in part:

"No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied."
(Emphasis added).

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Article 9, Section 9 states:

"Every law which imposes, continues, or revives a tax shall distinctly state the tax and the objects for which it shall be applied; and it shall not be sufficient to refer to any other law to fix such tax or object." (Emphasis added).

With regard to the transaction privilege tax code (Article 1, Chapter 8, Title 42, Arizona Revised Statutes), A.R.S. § 42-1309 levies ". . . privilege taxes measured by the amount or volume of business transacted by persons on account of their business activities. . . ." The object of the tax is the raising of public money ". . . to be used in liquidating the outstanding obligations of the state and county governments, [and] to aid in defraying the necessary and ordinary expenses of the state and the counties. . . ."

Although the overall purpose sought by HB 2344 appears to fall within the aforesaid constitutional and statutory limits, a minor problem seems to be generated by the use of the somewhat vague phrase ". . . contingency fund for the food stamp program". There is also some question as to whether or not ". . . the outreach program . . ." falls within the limits of A.R.S. § 42-1309, since that term is not explained or defined, either actually or by reference.

An amendment which would correct these minor problems would define and explain the purposes for which the revenues would be expended to clearly bring the statute within A.R.S. § 42-1309.

Very truly yours,

BRUCE E. BABBITT
The Attorney General

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